

contains sufficient Category I information to permit the conduct of an organized, non-random search based on the DIA's filing arrangements and existing retrieval systems, or unless the record contains enough Category II information to permit inference of the Category I elements needed to conduct such a search.

(f) Requests for records may be denied only when the official designated in § 292.8 determines that such denial is authorized by the FOIA.

(g) When an initial request is denied, the requester will be apprised of the following:

(1) The basis for the refusal shall be explained to the requester, in writing, identifying the applicable statutory exemption or exemptions invoked under provisions of this part.

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review.

(3) The final denial shall include the name and title or position of the official responsible for the denial.

(4) The response shall advise the requester with regard to denied information whether or not any reasonably segregable portions were found.

(5) The response shall advise the requester of the right to appeal within 60 days of the date of the initial denial letter.

(h)(1) Initial availability, releasability, and cost determinations will normally be made within 10 working days of the date on which a written request for an identifiable record is received by the DIA. If, due to unusual circumstances, additional time is needed, a written notification of the delay will be forwarded to the requester within the 10 working day period. This notification will briefly explain the circumstances for the delay and indicate the anticipated date for a substantive response. The period of delay, by law, may not exceed 10 additional working days.

(2) Requests shall be processed in order of receipt. However, this does not preclude DIA from completing action

on a request which can easily be answered, regardless of its ranking within the order of receipt. DIA may expedite action on a request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of DIA.

§ 292.5 How the public submits requests for records.

(a) Requests to obtain copies of records must be made in writing. The requests should contain at least the following information:

(1) Reasonable identification of the desired record as specified in § 292.4(e), including (if known) title or description, date, and the issuing office.

(2) With respect to matters of official records concerning civilian or military personnel, the first name, middle name or initial, surname, date of birth, and social security number of the individual concerned, if known.

(b) Persons desiring records should direct inquiry to: Defense Intelligence Agency, ATTN: DSP-1A (FOIA), Washington, DC 20340-3299.

§ 292.6 FOIA exemptions.

The following type of records may be withheld in whole or in part from public disclosure unless otherwise prescribed by law.

(a) *Exemption (b)(1).* Those properly and currently classified in the interest of national defense or foreign policy, as specifically authorized under the criteria established by Executive Order and implemented by regulations, such as DoD 5200.1-R.⁴ Although material may not be classified at the time of the FOIA request, a classification review may be undertaken to determine whether the information should be classified. The procedures outlined in DIAR 50-2⁵ regarding classification apply. In addition, this exemption shall be invoked when the following situations are apparent:

⁴See footnote 1 to § 292.3(a)(3).

⁵Forward requests to: Defense Intelligence Agency, ATTN: DSP-1A (FOIA), Washington, DC 20340-3299.

(1) The fact of the existence or non-existence of a record would itself reveal classified information. In this situation, DIA shall neither confirm or deny the existence or nonexistence of the record being requested. A “refusal to confirm or deny” response must be used consistently, not only when a record exists, but also when a record does not exist. Otherwise, the pattern of using a “no record” response when a record does not exist, and a “refusal to confirm or deny” when a record does exist will itself disclose national security information.

(2) Information that concerns one or more of the classification categories established by Executive Order and DoD 5200.1-R shall be classified if its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security.

(b) *Exemption (b)(2)*. Those containing or constituting rules, regulations, orders, manuals, directives, and instructions relating to the internal personnel rules or practices of the DIA if their release to the public would substantially hinder the effective performance of a significant function of the Department of Defense, and they do not impose requirements directly on the general public. This exemption has two profiles, high (b)(2) and low (b)(2).

(1) Records qualifying under high (b)(2) are those containing or constituting, rules, regulations, orders, manuals, directives, and instructions the release of which would allow circumvention of these records thereby substantially hindering the effective performance of a significant function of the Department of Defense.

(2) Records qualifying under the low (b)(2) profile are those that are trivial and housekeeping in nature for which there is no legitimate public interest or benefit to be gained by release, and it would constitute an administrative burden to process the request in order to disclose the records.

(c) *Exemption (b)(3)*. Those concerning matters that a statute specifically exempts from disclosure by terms that permit no discretion on the issue, or in accordance with criteria established by that statute for withholding or refer-

ring to particular types of matters to be withheld.

(d) *Exemption (b)(4)*. (1) Those containing trade secrets or commercial or financial information that the DIA receives from a person or organization outside the Government with the understanding that the information or record will be retained on a privileged or confidential basis in accordance with the customary handling of such records. Records within the exemption must contain trade secrets or commercial or financial records the disclosure of which is likely to cause substantial harm to the competitive position of the source providing the information, impair the Government’s ability to obtain necessary information in the future, or impair some other legitimate Governmental interest.

(2) When a request is received for a record that was obtained or provided by a non-U.S. Government source, the source of the record or information (also known as “the submitter” for matters pertaining to proprietary data) shall be notified promptly of that request and afforded reasonable time (e.g. 30 calendar days) to present any objections concerning the release, unless it is clear that there can be no valid basis for objection. This practice is required for those FOIA requests for data not deemed clearly exempt from disclosure under Exemption (b)(4). For further guidance, see DoD 5400.7-R, paragraph 5-207.

(e) *Exemption (b)(5)*. Those concerning internal advice, recommendations, and subjective evaluations, as contrasted with factual matters, that are reflected in records pertaining to the decision-making process of an agency, whether within or among agencies or within or among DoD components. Also exempted are records pertaining to the attorney-client privilege and the attorney work-product privilege.

(f) *Exemption (b)(6)*. Information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the requester, would result in a clearly unwarranted invasion of personal privacy. Release of information about an individual contained in a Privacy Act system of records that would constitute a clearly

unwarranted invasion of privacy is prohibited, and could subject the releaser to civil and criminal penalties.

(g) *Exemption (b)(7)*. Records or information compiled for the purpose of enforcing civil, criminal, or military law, including the implementation of Executive Orders or regulations issued pursuant to law, but only to the extent that the production of such law enforcement records or information

(1) Could reasonably be expected to interfere with enforcement proceedings.

(2) Would deprive a person of a right to a fair trial or an impartial adjudication.

(3) Could constitute an unwarranted invasion of the personal privacy of others (also see DoD 5400.7-R, paragraph 3-200, Number 7 a. 3. (a)-(c)).

(4) Could disclose the identity of a confidential source.

(5) Would disclose investigative techniques and procedures, or

(6) Could endanger the life or physical safety of law enforcement personnel. This exemption may be invoked to prevent disclosure of documents not originally created for, but later gathered for, law enforcement purposes.

§ 292.7 Filing an appeal for refusal to make records available.

(a) A requester may appeal an initial decision to withhold a record. Further, if a requester determines a "no record" response in answer to a request to be adverse, this determination may also be appealed. Appeals should be addressed to: Defense Intelligence Agency, ATTN: DSP-1A (FOIA), Washington, DC 20340-3299.

(b) The requester shall be advised that the appellate authority must receive an appeal no later than 60 calendar days after the date of the initial denial letter.

(c) Final determination on appeals normally will be made within 20 working days of receipt of the appeal at the above address. If additional time is needed to decide the appeal because of unusual circumstances, the final determination may be delayed for the number of working days, not to exceed 10, which were not utilized as additional time for responding to the initial request. Appeals shall be processed in

order of receipt. However, this does not preclude DIA from completing action on an appeal request which can easily be answered, regardless of its ranking within the order of receipt. DIA may expedite action on an appeal request regardless of its ranking within the order of receipt upon a showing of exceptional need or urgency. Exceptional need or urgency is determined at the discretion of DIA.

(d) When an appeal is denied, the requester will be apprised of the following:

(1) The basis for the refusal shall be explained to the requester, in writing, identifying the applicable statutory exemption or exemptions invoked under provisions of this part.

(2) When the final refusal is based in whole or in part on a security classification, the explanation shall include a determination that the record meets the criteria and rationale of the governing Executive Order, and that this determination is based on a declassification review.

(3) The final denial shall include the name and title or position of the official responsible for the denial.

(4) The response shall advise the requester with regard to denied information whether or not any reasonably segregable portions were found.

(5) The response shall advise the requester of the right to judicial review.

§ 292.8 Responsibilities.

When a request for information or records is received, the following will apply:

(a) *DSP-1A*. (1) Receives requests and assigns tasking.

(2) Maintains appropriate suspenses and authorizes all extensions of response time.

(3) Acts as the responsible operating office for all Agency actions related to the FOIA.

(4) Drafts and transmits responses on:

(i) The release of records and/or information.

(ii) Obtaining supplemental information from the requester.

(iii) Informing the requester of any fees required.

(iv) The transfer to another element or agency of the initial request.